

**§ 55-10-03. Amendment by board of directors and shareholders.**

(a) If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted pursuant to this section. Except as provided in G.S. 55-14A-01, the proposed amendment must be adopted by the board of directors.

(b) Except as provided in G.S. 55-7-31(f), 55-10-02, 55-10-07, and 55-14A-01, after adopting the proposed amendment the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless one of the following circumstances exist, in which event the board of directors shall communicate the basis for not recommending approval of the amendment to the shareholders at the time it submits the amendment to the shareholders:

- (1) The board of directors determines that, because of conflict of interest or other special circumstances, it should not make a recommendation that the shareholders approve the amendment.
- (2) G.S. 55-8-26 applies.

(c) The board of directors may condition its submission of the amendment to the shareholders on any basis.

(d) If the amendment must be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder in accordance with G.S. 55-7-05, whether or not the shareholder is entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice of meeting must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and the notice must contain or be accompanied by a copy or summary of the amendment. If the amendment is required to be approved by the shareholders and the approval is to be obtained through action without meeting, the corporation must notify shareholders if required by G.S. 55-7-04(d).

(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by all of the following:

- (1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create appraisal rights.
- (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting group entitled to vote on the amendment. (1893, c. 380; 1899, c. 618; 1901, c. 2, ss. 28, 29, 30, 37; 1903, c. 510; Rev., ss. 1174, 1175, 1178; C.S., ss. 1130, 1131; 1925, c. 118, ss. 1, 2a; 1927, c. 142; 1931, c. 243, ss. 4, 5; 1933, c. 100, ss. 7, 8; 1941, c. 97, s. 5; G.S., ss. 55-30, 55-31; 1953, c. 54; c. 119, ss. 1, 2; 1955, c. 1371, s. 1; 1959, c. 1316, s. 25; 1973, c. 469, s. 30; 1989, c. 265, s. 1; 1991, c. 645, s. 8; 2000-140, s. 101(b); 2005-268, s. 14; 2011-347, s. 5; 2013-153, s. 8; 2018-45, s. 14.)